

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

IN RE:

Samuel Couch
Acquenetta Couch

Debtor(s)

Case No.: 15-23317

Chapter: 13

Hearing Date: 5/9/16

Judge Jacqueline P. Cox

NOTICE OF MOTION

TO: Tom Vaughn, Chapter 13 Trustee, 55 E. Monroe Street, Suite 3850, Chicago, IL 60603 by electronic notice through ECF
Samuel Couch, Acquenetta Couch, Debtor(s), 9910 S Normal, Chicago, IL 60628
Orlando Velazquez, Attorney for Debtor(s), 105 W. Madison 23rd Floor, Chicago, IL 60602 by electronic notice through ECF

PLEASE TAKE NOTICE that on the 5/9/16, at 9:00AM, or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge Jacqueline P. Cox, Bankruptcy Judge, in the courtroom usually occupied by him/her at the Everett McKinley Dirksen Building, 219 South Dearborn, Chicago, Illinois, room 680, or before any other Bankruptcy Judge who may be sitting in his/her place and stead, and shall then and there present this Motion of the undersigned, a copy of which is attached hereto and herewith served upon you, and shall pray for the entry of an Order in compliance therewith, at which time you may appear if you so desire.

PROOF OF SERVICE

The undersigned, an attorney, hereby certifies that I have served a copy of this Notice along with the attached Motion upon the parties listed above, as to the Trustee and Debtor's attorney via electronic notice on April 21, 2016 and as to the debtor by causing same to be mailed in a properly addressed envelope, postage prepaid, from 7140 Monroe Street, Willowbrook, IL 60527 before the hour of 5:00 PM on April 21, 2016.

/s/ Jose Moreno

Attorney for Movant

Berton J. Maley ARDC#6209399

Rachael A. Stokas ARDC#6276349

Gloria C. Tsotsos ARDC#6274279

Jose G. Moreno ARDC#6229900

Peter C. Bastianen ARDC#6244346

Joel P. Fonferko ARDC#6276490

Codilis & Associates, P.C.

15W030 North Frontage Road, Suite 100

Burr Ridge, IL 60527

(630) 794-5300

C&A FILE (14-14-06336)

NOTE: This law firm is a debt collector.

CERTIFICATE OF SERVICE

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**MOTION FOR RELIEF FROM THE AUTOMATIC STAY OR IN THE ALTERNATIVE
TO DISMISS THE CASE FOR FAILURE TO MAKE PLAN PAYMENTS**

NOW COMES THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE BENEFIT OF THE CERTIFICATEHOLDERS OF THE CWABS INC., ASSET-BACKED CERTIFICATES, SERIES 2004-4, (hereinafter "Movant"), by and through its attorneys, Codilis & Associates, P.C., and moves this Honorable Court pursuant to 11 U.S.C. §362(d) for an Order granting Movant relief from the automatic stay , or alternatively, for entry of an order dismissing the case pursuant to 11 U.S.C. §1307, and in support thereof states as follows:

1. This Court has jurisdiction pursuant to 28 U.S.C. §1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois, Eastern Division;
2. The Debtor is indebted to Movant for which the Movant claims a valid security interest in the property commonly known as 9910 S. Normal Avenue, Chicago, IL 60628;
3. Enforcement of this security interest has been stayed automatically by operation of 11 U.S.C. §362 of the Bankruptcy Code upon Debtor filing of this petition on 7/7/15;
4. The Chapter 13 plan herein provides for the cure of the default of said mortgage and maintenance of current payments during the pendency of the proceeding;

5. Pursuant to the plan, Debtor(s) is/are to disburse the current monthly mortgage payments directly to Movant beginning with the first payment due after the filing of the Chapter 13 Bankruptcy (subject to periodic adjustment due to change in escrow);

6. The unpaid principal balance as of 4/12/16 is \$106,280.42;

7. Movant is entitled to relief from the automatic stay under 11 U.S.C. Section 362(d) for the following reasons:

- a) As of 4/12/16, the Debtor(s) is/are past due for the 8/1/15, and all amounts coming due since that date. Any payments received after this date may not be reflected in this default;
- b) As of 4/12/16, the total post-petition default through and including 4/1/16, is \$10,037.88. Any payments received after this date may not be reflected in this default;

8. Said failure to make post-petition mortgage payments is sufficient grounds for relief from the automatic stay for cause pursuant to 11 U.S.C. Section 362(d)(1);

9. That sufficient grounds exist to dismiss this proceeding under 11 U.S.C. §1307 as:

- a) debtor's failure to timely pay post-petition mortgage payments as required under the plan and 11 U.S.C. §1322(b)(2) and (b)(5) constitutes an unreasonable delay that is prejudicial to moving creditor and the case should be dismissed under §1307(c)(1);
- b) debtor's failure to timely pay post-petition mortgage payments as required under the plan and 11 U.S.C. §1322(b)(2) and (b)(5) constitutes "cause" and the case should be dismissed under the general provisions of 11 U.S.C. §1307;

- c) the default in payments under the proposed plan, constitutes a failure to commence making timely payments under 11 U.S.C. §1326 and the case should be dismissed under §1307(c)(4);

10. This Court has authority to order that Rule 4001(a)(3) is not applicable to the order entered in granting this motion, and Movant requests this Court so order;

11. Movant has incurred attorney fees and/or costs in connection with this bankruptcy proceeding:

\$850.00 for Preparation of Notice and Motion for Relief from the Automatic Stay, and prosecution of same
\$176.00 for Court filing fee

12. Shellpoint services the underlying mortgage loan and note for the property referenced in this motion for (Movant). In the event the automatic stay in this case is modified, this case dismisses, and/or the Debtor obtains a discharge and a foreclosure action is commenced on the mortgaged property, the foreclosure will be conducted in the name of Movant. Movant, directly or through an agent, has possession of the Note. The Note is endorsed in blank. Movant is the beneficiary or the assignee of the Deed of Trust.

WHEREFORE, THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE BENEFIT OF THE CERTIFICATEHOLDERS OF THE CWABS INC., ASSET-BACKED CERTIFICATES, SERIES 2004-4 prays this Court enter an Order pursuant to 11 U.S.C. Section 362(d) modifying the automatic stay as to Movant, or alternatively, for an entry of an order dismissing the case pursuant to 11 U.S.C. §1307, allowing the fees and costs described herein to be added to the indebtedness pursuant to the terms of the note and mortgage, and for such other and further relief as this Court may deem just and proper.

Dated this April 21, 2016.

Respectfully Submitted,

Codilis & Associates, P.C.

By: /s/ Jose Moreno

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